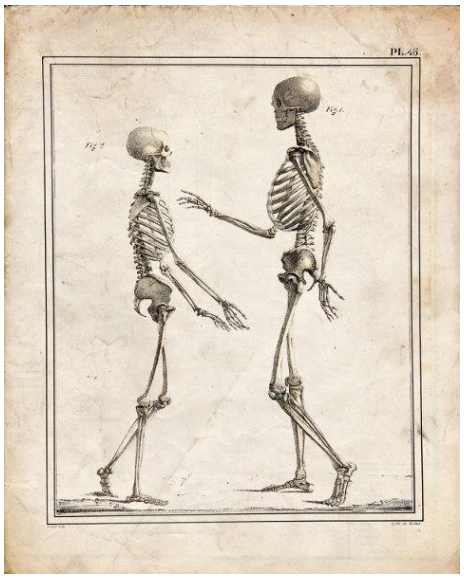
Dr. Garber's
DISPENSARY OF COUGH SYRUP, BUFFALO LOTION, PLEASANT PELLETS, PURGATIVE PECTORAL, SALVE & WORKERS' COMPENSATION CASES

by Brad G. Garber
Wallace, Klor & Mann



02/03/2016

Dawn E. Peterson, 67 Van Natta 2089 (2015)
(ALJ Smith)

Claimant requested review of an Opinion and Order that affirmed an Order on Reconsideration's whole person impairment award of 4 percent, after apportionment. Claimant injured her left knee at work. Initially, the employer accepted a **left knee sprain**. Subsequently, the employer modified the scope of claim acceptance to include an **ACL tear, a left meniscus tear, and ACL reconstruction**. On the same date, the employer denied a new/omitted medical condition claim for "left tricompartmental arthritis."

The claim was closed on November 12, 2014 and claimant received a 2 percent whole person award. Claimant requested reconsideration. On January 10, 2015, a

medical arbiter panel attributed 10 percent of claimant's left knee range of motion to the accepted conditions and 90 percent to preexisting arthritis and body habitus.

The Appellate Review Unit requested additional information concerning the percentage of range-of-motion impairment due to preexisting arthritis and the percentage of range-of-motion impairment due to body habitus. In response, one of the medical arbiters attributed 50 percent of the 90 percent apportionment to the preexisting arthritis and 50 percent of the 90 percent to body habitus.

Citing *Schleiss v. SAIF*, 354 Or 637 (2013), Claimant argued that her whole person impairment award should not have been apportioned, at all. Using an old and discredited argument, Claimant argued that, because the employer had not accepted, then denied, a combined condition, the Court's holding, in *Schleiss*, precluded apportionment.

In *Claudia S. Stryker*, 67 Van Natta 1003 (2015)(previously reported on), the Board held that an employer need not accept a combined condition and, then, deny a combined condition, for apportionment to occur. Furthermore, in *Marisela Johnson*, 67 Van Natta 1458 (2015), the Board held that, under *Schleiss*, a denied condition is a "legally cognizable" condition to which the "apportionment" rule applies. In that case, the Board apportioned the claimant's whole person impairment between her accepted condition and her denied condition. Consistent with its dispositions, in *Stryker* and *Johnson*, the Board affirmed the ARU's apportionment in this case. **Affirmed (Appealed by claimant to the Court of Appeals)**

Katherine A. Lapraim, 68 Van Natta 39 (2016) (ALJ Ogawa)

Claimant requested review of an Order on Review that found her claim was not prematurely closed.

Claimant filed a claim for a low back injury at work. SAIF accepted a **lumbar strain**. After Dr. Toal, who examined Claimant at SAIF's request, opined that claimant was medically stationary, and Claimant's attending physician concurred

with that opinion, SAIF issued a Notice of Closure. After the ARU determined that the claim had not been prematurely closed, Claimant requested a hearing.

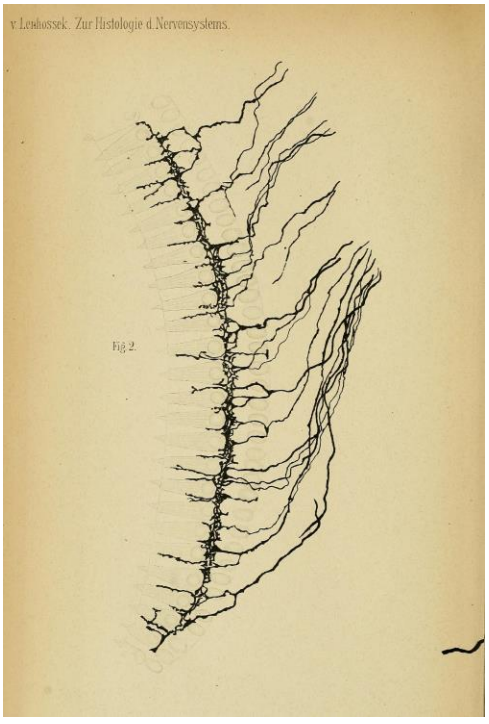
Claimant apparently relied upon an opinion by a "Dr. Croson" (who administered an epidural steroid injection) that claimant's injury caused symptoms in her facet joints, or that symptomatic facet joints were "direct medical sequelae" of the accepted lumbar strain, and that she was not medically stationary.

Claimant, citing *Brown v. SAIF*, 262 Or App 640, *rev allowed* 356 Or 397 (2014), argued that her claim could only be closed when she was medically stationary "as to all the effects of the injury event." Claimant argued that Dr. Croson's opinion established that, at claim closure, she was not medically stationary as to all of the effects of the work-related injury incident. The Board disagreed.

Relying on its prior holding, in *Stuart C. Yekel*, 67 Van Natta 1279 (2015)(finding that "statutory and administrative authority make clear [that] impairment is based on the accepted conditions and the direct medical sequelae of the accepted conditions"), the Board declined to apply the *Brown* holding in the context of determining medically stationary status and premature closure. **Affirmed**

And from the Court of Appeals:

Magana-Marquez v. SAIF Corp., 1305471; A157620 (January 21, 2016)



Claimant strained her low back at work. SAIF accepted a **lumbar strain**. A "Dr. Vantilburg" was Claimant's attending physician. After treating her for several months, he declared her medically stationary, with no impairment related to her injury. Although Dr. Vantilburg measured a reduction in Claimant's lumbar range of motion, he found that the reduction in range of motion was not related to her accepted condition of lumbar strain.

Based on Dr. Vantilburg's findings, SAIF issued a notice of closure. Claimant received no whole person impairment award. She requested reconsideration and was examined by a medical arbiter panel. Like Claimant's attending

physician, the panel found a loss in range of motion, but did not attribute that to claimant's accepted condition.

Claimant argued that, under *Schleiss*, there should not be any apportionment. She argued that the decision, in *Schleiss*, mandated an award of disability, notwithstanding the fact that the reduction in her range of motion were not caused by her workplace injury to her back. The Court stated, "Absent any causal relationship between claimant's compensable injury and her claimed disabilities, ORS 656.214 does not authorize an award of permanent disability." **Affirmed**